

REMARKS

Claims 1, 56-63, 67-75, 79 and 82-88 were pending and under consideration in the instant application. Claims 10, 11, 76 and 77 were withdrawn from consideration. With this response, Applicants have canceled Claims 10, 11, 76, 77 and 78. After entry of the instant amendment, Claims 1, 56-63, 67-75, 79 and 82-88 are pending and under consideration. For the Examiner's convenience, a clean copy of all pending claims is attached at Exhibit A.

I. THE AMENDMENT OF THE CLAIMS

Claims 10, 11, 76, 77 and 78 have been canceled as requested by the Examiner.

II. DOUBLE PATENTING

a. U.S. Patents

Claims 56-75, 79 and 82-88 stand rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over U.S. Patent Nos. 6,004,925; 6,037,323 and 6,265,377. The PTO contends that the Terminal Disclaimer (filed December 18, 2002) is defective allegedly because it lists more inventors (six) than on the record (five). Applicants respectfully disagree.

A terminal disclaimer can overcome a double patenting rejection for the period the patent is commonly *owned* with the application or patent which forms the basis of the rejection. *See*, MPEP 706.02 (I)(3) and 804. The *owner* of a patent can file a terminal disclaimer. *See*, MPEP 804.02 (V).

The subject matter of the current application was invented by five inventors:

1. Jean-Louis Dasseux;
2. Renate Sekul;
3. Klaus Büttner;
4. Isabelle Cornut; and
5. Günther Metz.

The inventors assigned their interests to six assignees/owners:

1. Jean-Louis Dasseux;
2. Renate Sekul;
3. Klaus Büttner;
4. Isabelle Cornut;
5. Günther Metz; and
6. Jean Dufourcq.

A copy of the Notice of Recordation of Assignment is provided herewith for the PTO's convenience at Exhibit B. In addition, the recordation may be found at Reel/Frame 9928/0452.

U.S. Patent No. 6,004,925, not assigned, was invented and owned by six inventors:

1. Jean-Louis Dasseux;
2. Renate Sekul;
3. Klaus Büttner;
4. Isabelle Cornut;
5. Günther Metz; and
6. Jean Dufourcq.

U.S. Patent Nos. 6,037,323 and 6,265,377 are owned by:

1. Jean-Louis Dasseux;
2. Renate Sekul;
3. Klaus Büttner;
4. Isabelle Cornut;
5. Günther Metz; and
6. Jean Dufourcq.

A copy of the Notice of Recordation of Assignment for U.S. Patent No. 6,037,323 (and continuations thereof, including U.S. Patent 6,265,377) is provided herewith for the PTO's convenience at Exhibit C. In addition, the recordation may be found at Reel/Frame 012153/0214.

Thus, the pending application and U.S. Patents 6,004,925, 6,037,323 and 6,265,377 are commonly *owned* by the six *assignees*. Pursuant to MPEP 706.02 (I)(3) and 804, the *owners* can terminally disclaim the commonly owned patent that forms the basis of the

rejection. Therefore, the Terminal Disclaimer is not defective. Applicants respectfully request that the rejection, if any, be withdrawn.

b. U.S. Application

Claims 56-75, 79 and 82-88 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over copending U.S. Application No. 09/453,833.

In order to expedite allowance of the instant claims, Applicants submit herewith a Terminal Disclaimer with respect to copending U.S. Application No. 09/453,833. Applicants respectfully request that the rejection, if any, be withdrawn.


CONCLUSION

Applicants submit that Claims 1, 56-63, 67-75, 79 and 82-88 satisfy all the criteria for patentability and are in condition for allowance. An early indication of the same is therefore kindly solicited.

No fee other than the Terminal Disclaimer Fee is believed due with this response. However, pursuant to 37 C.F.R. §1.136 (a)(3), the Commissioner is authorized to charge all required fees, fees under 37 C.F.R. §1.17 and all required extension of time fees, or credit any overpayment, to Pennie & Edmonds LLP, U.S. Deposit Account No. 16-1150 (Order No. 9196-018-999).

Respectfully submitted,

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